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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1949

No. 119

LOUISE M. WISSNER and LEANDOUS H. WISSNER,
Appellants,

vs.

MARGARET WISSNER,
Appellee.

Appeal from the District Court of Appeal, State of California, Third Appellate District.

Hearing Denied by the Supreme Court of the State of California.

APPELLEE'S BRIEF.

THE FACTS.

1. While the facts in this matter were summarized in our statement opposing jurisdiction (page 2), for completeness sake we repeat them here as briefly as possible.

2. The original complaint in this action, in addition to the cause of action covering the insurance policy, sought recovery of one-half of certain community funds accumulated from the pay of the deceased soldier, Major Leonard O. Wissner, and turned over to his parents to be utilized for the purchase of bonds for one Naomi Beiler and to recover one-half of certain other community property delivered into the hands of his parents, all without consideration. The judgment in favor of the plaintiff on this cause of action was not appealed from and is not before this Court. (R. 19 and 20.)

3. The second cause of action was for recovery of the wife's vested half interest in the proceeds of a National Service Life Insurance Policy purchased by the deceased soldier and paid for from his earnings as a major. Recovery was sought against the beneficiary after receipt of the funds and there were no parties to the action except the wife as plaintiff and the mother and father, who were named as beneficiaries, as defendants. (R. 3, 11 undenied.)

4. Margaret V. Wissner and Leonard O. Wissner were married in the State of California in August, 1930, and continued as husband and wife and continued at all times as residents of and domiciled in the State of California up to the date of death of the said Leonard O. Wissner. After marriage plaintiff continued her work as a nurse and contributed her earnings to the community for many years while her husband completed his medical training. (R. 20.)

5. Leonard O. Wissner died testate while serving as a major in the United States Army on November 14, 1945. (R. 18.)

6. The National Service Life Insurance Policy in question was for the sum of $10,000 and was without consideration payable on the death of the soldier to the appellants, mother and father of the deceased. (R. 12-13.)

7. The plaintiff appellee did not at any time know that the deceased soldier had named anyone other than herself as beneficiary, had never consented thereto, and had never consented to the application or use of community funds for the payment of premiums on said insurance policy. (R. 13 and 18.)

8. All of the premiums on said policy were paid with community funds. (R. 13-14 and 18.)

9. Under California law, the proceeds of said insurance policy were and are the community property of appellee Margaret V. Wissner and the deceased, Leonard O. Wissner. (R. 13, para 7.)

10. The defendants, as beneficiaries, received moneys from the United States government under said insurance policy as set forth in the findings of fact of the trial Court. (R. 14.)

11. The litigants in the case were residents of California, appeared in the trial Court in California, and submitted to the jurisdiction thereof. (Appears from entire Record.)

The fact that the premiums on the insurance were paid with community funds is admitted by the plead-

ings (see allegations in complaint, Paragraph 2, first cause of action (R. 3), and answer thereto (R. 8), Paragraph 2, where appellants allege that premiums were paid from the pay of the deceased as an officer of the army but make no denial of the allegation by the appellee in her complaint that the earnings were community property). Parenthetically we add to this statement of facts a comment on appellants' brief in opposition to motion for affirmation of judgment. At page 25 of that brief we find a statement that the appellee as the widow of the deceased had already received half of his estate and property left in joint tenancy. No such facts are in evidence in this case and counsel's reference to the matter is just as improper as it would be for us to report the fact that the wife has been rendered desperately ill as a result of this controversy.

SUMMARY OF ARGUMENT.

The argument which is found in the succeeding pages, we briefly summarize as follows:

First. It is our belief that this Court should not take jurisdiction of the present controversy for at least two reasons, namely:

1. The specifications of error made by counsel for appellants are all based on the bald statement that the decision of the California Court deprived the appellants of their property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States. This position seems to us to be completely untenable because of

the well recognized rule of law that a person who has been fully heard in the course of regularly conducted and fully completed judicial proceedings is not, by a judgment therein, deprived of property without due process of law even though the judgment may be erroneous.

2. In this action the plaintiff seeks no relief against the United States of America or any of its representatives or agents. The veterans' insurance program, as set up by Congress, is completely and wholly unaffected by the decision of the California Appellate Court and there is, therefore, no federal question involved in this particular matter. The case is distinguished from all other cases of similar nature that appear in any printed reports by the fact that the United States is not a party and is not affected by the decision and has no interest in it.

Second. In the event the Court takes jurisdiction of this matter, it is advisable to first recognize the importance of the problem presented. Any tendency to think only of the simple situation where a veteran dies during service, having paid all of the premiums from his soldier's pay, should be avoided with the realization that if the contention of the appellants is sustained, vested community property interest of thirty years standing in policies issued to veterans of the first World War will be placed beyond the reach of the wife even though she may have contributed to the accumulation thereof over the entire elapsed time. Likewise, if a decision favorable to appellants is had it must necessarily contemplate the fact that the

soldier may utilize any part of the community property whether accumulated before the war or not, to invest in any type of insurance policy that may be provided for by congressional act, even a one premium policy, thereby destroying long existing vested rights of the wife in their entirety.

Third. Appellants do not contend that the character of the property in this insurance policy is changed from community to separate, but only contend that the wife's remedies in the State Courts have been destroyed. In order to sustain this position they place their sole reliance on four lines of Section 454a of the World War Veterans' Relief Act as follows:

> "And shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever either before or after receipt by the beneficiary."

Appellants, in order to support their contention, must take the position that this particular language is to be construed to the effect that no process of any kind, under any circumstances, can reach the proceeds of the insurance at any time.

Fourth. Such a position cannot be supported by authority because it is contrary to the leading decisions on the point. For a great many years, in both the federal and state Courts, it has been recognized that community property laws are applicable to veterans' insurance and that the proceeds of veterans' insurance are subject to Court process to enforce the payment of family obligations. Many cases are cited by us on this point in our argument, but perhaps the

most outstanding are *United States v. Robinson*, *Schlaefer v. Schlaefer* and *Succession of Lynch*, the citations for which cases will be found in subsequent portions of this brief.

In our judgment, these decisions completely destroy the position of the appellants that Court process can never reach the proceeds of veterans' insurance.

Fifth. The proceeds of the insurance policy in question were and are community property. This is admitted by the pleadings and established by all the authorities. The appellee's right to one-half thereof is a vested right. This likewise is specifically established by the Code provisions of the State of California and recognized by all of the authorities, hence, if Section 454a is construed as destroying the wife's right to obtain her property or protect it through the intervention of the state Courts that portion of the section is invalid under the Fifth Amendment to the United States Constitution.

Sixth. It is the duty of the Court to construe this section in such a way that it will not be in conflict with the Constitution and it should not be construed as destroying a constitutional right or in conflict with the state law unless the purpose of the Act cannot otherwise be fully accomplished. It is entirely reasonable to construe the section as exempting the proceeds of the insurance from taxation and from the claims of outsiders, such as creditors, but permitting the wife and children to protect their rights in the state Courts as against beneficiaries if the proceeds have been paid

to them. This construction will in no way disturb the congressional plan for veterans' insurance.

Seventh. It seems to us to be apparent that Congress had no intention to destroy the rights of the wife to protect and secure her vested community property.

Congress specifically mentioned the two exemptions which it had in mind, namely, exemption from taxation and exemption from claims of creditors. The language following these two specific exemptions is general and under the ordinary rules of statutory construction would be limited by the specific phraseology preceding it.

Since Congress saw fit to specifically mention the two exemptions above referred to, it seems unlikely that they would have failed to specifically include the destruction of the wife's rights if they so intended as that would have been a step of far greater severity than the other two.

Congress had the question of the extent of the exemptions under consideration after the decision in the case of *Pagel v. Pagel,* in 1935 and again in 1940. With many decisions subjecting the proceeds of insurance to family claims preceding those dates Congress did not see fit to add any clause covering the destruction of family rights.

Eighth. This nation has always recognized and realized the substantial contribution to the cause of war resulting from the courage, faith and energy so

freely given by the wives of soldiers and a destructive blow to the vested marital rights of millions of American women could, under no circumstances, be regarded as aiding in the cause of prosecuting a war.

ARGUMENT.

I.

THE SUPREME COURT SHOULD NOT TAKE JURISDICTION.

(a) None of the specifications of error made by counsel for appellants can be sustained as the same are phrased in the typewritten copy of appellants' brief which has been served on us.

The specifications of error appear on pages 12-15 of appellants' brief.

Every specification of error set forth by the appellants is based solely on the contention that the Courts of California by the decision in this case *"deprived the appellants of their property without due process of law in violation of Section 1 of the 14th Amendment to the Constitution of the United States"*.

This exact phraseology is repeated in each of the seven specifications of error and is the basic contention in each one of said specifications of error.

This case was instituted in the Superior Court of Stanislaus County, California, in accordance with the statutes and legal provisions of that state for the filing of actions of this character between citizens. The defendants appeared in the action and submitted them-

selves to the jurisdiction of the Court. Every step of the proceeding in the commencement, trial, appeal, and final denial of a hearing by the Supreme Court of California was had in accordance with the statutes and laws of California. At every step of the proceeding the defendants appeared, made no objection to the process for the determination of their claims as provided for by California law, and awaited the final judgment of the Supreme Court of the state.

The appellants gambled on a favorable decision and not having obtained such a decision, now seek to claim as the *only error that the Courts of California deprived them of their property without due process of law contrary to Section 1 of the 14th Amendment to the Constitution of the United States.*

It is an elementary principle of law that where the judicial process is employed and the litigants follow out such orderly process for determining their rights in the Courts, the loss of property by the decision of the Court cannot be an infringement of the provisions of Section 1 of Article 14 of the Constitution of the United States.

Patterson v. Colorado, 205 U. S. 454 at 461, 51 L. Ed. 879,

where Mr. Justice Holmes said:

> "In general, the decision of a (state) court upon a question of law, however wrong and however contrary to previous decisions, is not an infringement of the 14th Amendment merely because it is wrong or because earlier decisions are reversed."

Central Land Company v. Laidley, 159 U. S. 103, 112, 40 L. Ed. 91:

"When the parties have been fully heard in the legal course of judicial proceedings, an erroneous decision of a state court does not deprive the unsuccessful party of his property without due process of law."

Since the time of the above decisions the rule therein stated is so well recognized that there appears to be little additional authority, but see

Tidal Oil Co. v. Flanagan, 263 U. S. 444, 68 L. Ed. 382

(b) The United States was not a party to this case, was not affected by the decision, and has no interest in it.

In all other cases considered by any Court of last resort or any of the lower federal Courts, the United States or a federal officer or department has been made a defendant and relief has been sought that would require the payment of benefits under the insurance direct to some person other than the beneficiary named in the policy.

The position which we have maintained at all times in this case distinguishes it completely from the contentions made in all other cases reviewed in the higher Courts. We have not sought to have a state Court interfere in any way with the carrying out of the veterans' insurance program to the full measure as provided by the Congressional Act. We have not asked that the United States government or any of its representatives be required to do any act or to refrain from doing any act. *We have maintained only*

that the state Court has the right to entertain litigation between citizens of the state over the proceeds of a veteran's insurance policy after they are in the hands of the beneficiary.

The decision of the trial Court and of the Appellate and Supreme Courts of the State of California recognizes fully the fact that federal agencies cannot be interfered with in completing all their duties under a veterans' insurance policy and the laws appertaining thereto, including the payment of the benefits to the named beneficiary.

Nothing in the decision in this case in any way changes or affects the rights or duties of the federal government and its agents from the very inception of a soldiers' insurance plan to the performance of the last act that the federal government is obligated to perform, namely, the payment of the benefits to the beneficiary.

A holding contrary to the decision approved by the Appellate and Supreme Courts of the State of California would require reading into the Act language which is not there.

II.

THE VALIDITY OF THE CONGRESSIONAL ACT PROVIDING FOR NATIONAL SERVICE LIFE INSURANCE IS NOT QUESTIONED.

Counsel for appellants, in their brief, page 17, still contends that Congress has the power to provide insurance for the members of the armed forces.

This fact has been conceded at all stages of this litigation, as will be observed from page 5 of our statement opposing jurisdiction.

Justice Adams, in her opinion, certainly did not question the right of Congress to provide for National Service Life Insurance but merely pointed out that if Courts endeavored to read into the Act language which is not there, as contended by appellants, it would deprive soldiers' wives in community property states such as California of their vested property interests and concluded that such an extension of the Act by judicial interpretation would be invalid under the 5th Amendment to the United States Constitution. (R. 22 to 28.)

III.

THE IMPORTANCE OF THE PROBLEM PRESENTED IN THIS PARTICULAR CASE IS FAR GREATER THAN THE CASE ITSELF INDICATES.

From reading the few opinions touching on this question, we gain the impression that the Courts considering the matter have confined their attention more or less to the situation where a soldier dies in service or immediately thereafter and all of the premiums on the policy have been paid from his compensation as a soldier. *It seems to us that there has been a failure, at least on the part of some Courts, to realize that this problem is of tremendous scope so far as community property is concerned.*

Since the United States has been in the business of writing insurance policies for soldiers, we have had two wars, one of which occurred 30 years ago. California soldiers of World War I (the same applies to soldiers of any other community property state) have maintained their veterans' insurance in force and effect with the help of their wives and paid premiums on those insurance policies out of community property of all kinds—possibly dividends from stock, rentals from buildings, earnings of the husband and wife—and other sources belonging to the community, for a period of over 30 years. During that time the wife, by virtue of the community property law, has accumulated a vested estate of important proportions. Those policies have been maintained by the husbands and wives in community property states not because of any military connections and not because of the furtherance of any war necessity, but for the purpose of building up a safe and dependable community estate through an ordinary business contract with the United States carried out by the latter at no profit and no loss. Many of these policies, like my own, are now ready to mature and bring into the community a not inconsiderable amount of cash.

A decision in this case upholding the contention of the appellants would mean that the California veterans of World War I could, by change of beneficiary, or for that matter, where they are themselves named beneficiaries, by obtaining the cash proceeds and holding them in their own name, deprive the wife who has aided in making the investment over a period of 30 years of all of her vested rights.

If it be held that the state cannot give Margaret V. Wissner the relief she obtained in this action, then if a veteran of World War I sees fit to give away the proceeds of his 30-year-old policy to some beneficiary other than his wife, the California Courts can afford her no protection against such an act in fraud of her interests.

If Congress in this instance can take away the vested community rights of the wife because the United States is contracting with her husband, then Congress can just as well take away the vested rights of the wife of a postal employee because he is contracting with the United States government, or the rights of a wife whose husband is engaged in interstate commerce because interstate commerce is a matter that is subject to federal control and regulation.

If Congress can take away the vested rights of the California wife in this case, then why could it not authorize the soldier going to war to pay to his government (secretly and without his wife's consent) all of his earnings plus any other sums from accumulated community property for the purchase of a one-premium insurance policy payable to himself on maturity or to his mother or father in the event of death, thereby defrauding the wife of all her property.

The difference in these situations is but a difference in degree. In this particular instance it is contended that Congress can take the wife's recently accumulated property at the rate of $5, $10, $20, or $50 a month while in the instance just mentioned it would merely

mean taking, as well, earlier accumulations in large sums.

The instances we have given and the possibilities we have suggested may be inept but we believe they will serve to emphasize the importance of the problem to be decided in this case and to direct attention away from the simple situation where the policy matures because of the death of the soldier during his military service the premiums being paid only from his community earnings as a soldier.

IV.

COMMUNITY PROPERTY LAWS ARE RECOGNIZED AS APPLICABLE TO VETERANS' INSURANCE POLICIES AND THEIR PROCEEDS.

Preliminary to a brief discussion of this point, we call attention to the fact that appellants filed as Appendix B to their statement of jurisdiction and referred to on pages 38 and 39 of their brief, *Johnson v. Shelton*, a decision of the Superior Court of Los Angeles County, California, by Judge Clarence Hanson.

Judge Hanson's decision in this case was the fourth Superior Court decision on the point, being preceded by 3 contrary decisions, namely, *Corabelle Bennett v. Modesta Lee Bennett*, decided by Judge Myron Westover on March 20, 1946, in the Appellate Division of the Los Angeles Superior Court; *Wissner v. Wissner*, the present case, decided by Superior Court Judge B. C. Hawkins of Stanislaus County; and

Carballo v. McFann, decided by Judge Otto Emme of the Los Angeles Superior Court on November 5, 1949. Judge Hanson's decision in *Johnson v. Shelton* was also preceded by the decision of the California Appellate Court in *Wissner v. Wissner*. Judge Hanson of Los Angeles Superior Court not only overruled the Appellate Court of California, but also overruled his two associates on the Superior Court bench in Los Angeles, one of them, Judge Myron Westover, having made his decision in the Appellate division of that Court.

We may say, however, that if the opinion of Superior Judge Hanson in the *Johnson* case is to be considered, it should also be remembered that the Supreme Court of California, approximately three weeks after Judge Hanson's decision, overruled him by denying a hearing in the *Wissner* case. (R. 30.)

In *United States v. Robinson*, 40 Fed. (2d) 14, it was held that the state law of Louisiana should apply in determining the rights as between a legal and a putative wife.

Succession of Lynch v. United States, 17 Fed. Supp. 674, cites *United States v. Robinson* and takes the same position. It is likewise worthy of note that in this case, at page 676, it is recognized that the proceeds of the policy are community property where the premiums are paid with community funds. We quote the following from the decision:

> "In default of a named beneficiary, proceeds of this policy fell into the community, *since it was taken out and the premiums were paid during the*

existence of the good faith relation which ended only at the death of Silas Lynch (the soldier). *The policy was thereby matured and Emma Lynch became the owner of one-half of this community estate* * * *" (Italics ours.)

United States v. Primilton, 76 Fed. (2d) 555. Here again the case of the *United States v. Robinson*, supra, is cited with approval and the opinion shows that the United States in prosecuting its appeal from the District Court of the United States for the Western District, took the position that the character of the proceeds of the insurance was to be determined by Louisiana law and that it was the property of the community.

Other cases supporting the contention that the character of the funds is to be determined by state law are:

United States v. Rose (Tex.), 57 S. W. (2d) 350, where it was held that since premiums were paid from community earnings one-half the insurance belonged to the widow. In this case *United States v. Robinson*, supra, was cited with approval.

Succession of Jones, 185 La. 377, 169 So. 440, cited *United States v. Robinson* with approval and found that premiums were paid during wedlock out of soldier's pay; that the soldier and his wife were residents of a community property state and decided that the insurance became a community estate and the wife was entitled to one-half as the surviving spouse in the community.

The appellants in this case place some reliance on *James v. United States* (S. D. Cal. 147 unreported). (Appellants' Brief p. 39.) As we view this case any remarks made by Judge Harrison contrary to the decision in *Wissner v. Wissner* are purely dictum and the decision itself has no bearing on the situation that now confronts your Honors.

The case involved the Texas law of community property under which the wife has no *vested* interest in life insurance purchased with community funds as *she definitely has under California law. The wife's interest in Texas is but an expectancy as she must show not only that the premiums were paid by the husband with community property and another person named as beneficiary, but she must also show the express intent of the husband to defraud her.*

Appellants likewise rely on the case of *Barton v. United States*, 75 Fed. Supp. 703. However, as we pointed out at page 2 of our analysis of this case (which analysis is attached as Exhibit A to our statement opposing jurisdiction), Judge Mathes was not called on to decide the question now before this Court, namely, the rights of a wife to obtain her community property from an individual beneficiary then in possession thereof, and his language concerning that matter must be regarded as dictum. The problem confronting him was whether or not the United States or its representatives could be forced to pay the proceeds to one other than the named beneficiary.

Quite recently *Pack v. United States*, 176 Fed. (2d) 770, was decided, holding that the widow could not

prevent the payment of proceeds of insurance by the United States to the beneficiary or require the United States to pay the same to her. The Court further held that it did not have jurisdiction to determine the claim of the widow to the effect that because of her community property interest the funds in the hands of the beneficiary should be impressed with a trust, thus avoiding the question that is presented in this particular case.

The California case of *Kaufman v. Kaufman*, 93 ACA 966, decided September 29, 1949, by the District Court of Appeal, Fourth District of California, held that where in a property settlement agreement with his wife the veteran husband agreed to name her as beneficiary, and under certain circumstances name their children, the agreement constituted an assignment contrary to the provisions of The World War Veterans' Relief Act and that where he changed the beneficiary to name a new wife after divorcing the wife with whom the settlement was made, the first wife could not enforce the provisions of the property settlement agreement in question.

In this case the property involved was treated as separate property since there was no evidence that premiums had been paid with community funds and the *Court specifically distinguished the case from Wissner v. Wissner by pointing out that the record in Kaufman v. Kaufman was silent as to the source of the premium payments and therefore a community property question was not involved.*

We further observe that in the case of *Nobles v. Cannell*, decided in the Superior Court of Los Angeles by Judge Ben V. Curler (referred to in Appellants' Brief) (after the interposition of the United States Attorney), Judge Curler finally arrived at a decision contrary to our position. However, he first wrote a very excellent and well considered opinion deciding the case in favor of the wife in exact accord with our contentions. A portion of this opinion is made a part hereof as the appendix.

We believe that it is clear that community property statutes have been repeatedly applied not only in state Courts but in federal courts in determining the question of the rights under and the proceeds from veterans' insurance policies.

V.

THE PROCEEDS OF THE INSURANCE POLICY IN QUESTION ARE COMMUNITY PROPERTY AND THE WIFE HAS A VESTED INTEREST THEREIN.

(a) Proceeds community property.

As nearly as we can understand the contentions of appellants, it would appear that they admit the proceeds of the insurance policy are community property; that they do not contend that Congress changed or made any effort to change the character of the property but rather contend that Congress destroyed the remedies of the wife so that she could not obtain the property which admittedly belonged to her.

We say that appellants apparently admit that the proceeds are community property due to the fact that their pleadings, as previously pointed out, admit that the premiums were paid with the earnings of the deceased and that the earnings were the community property of himself and his wife. (R. 3, Paragraph 2 of plaintiff's complaint not denied by answer.)

The fact that the earnings of the soldier are community property is also settled in the decision of *French v. French*, 17 Cal. (2d) p. 775 at p. 777, 112 P. (2d) 235, where the California Supreme Court specifically states that the earnings of the husband while serving in the Navy and up to the time of the dissolution of the marriage, are the property of the community.

This being true, it follows as an inescapable corollary that an accumulation resulting from the investment of the earnings is likewise community property.

Grimm v. Grimm, 26 Cal. (2d) 173 at 175, 157 Pac. (2d) 841:

"All premiums were paid with community funds and the policy was therefore community property * * *"

Travelers Insurance Company v. Fancher, 219 Cal. 351, 26 Pac. (2d) 482;

New York Life Insurance Company v. Bank of Italy, 60 Cal. App. 602, 214 Pac. 61.

The fact that the proceeds of the policy are community property is also settled by the findings in the trial Court. (R. 13, paragraph 7.) We assume that

this finding, in view of the clarity of the law on the situation, would not be questioned at this time.

We stated a moment ago that counsel for appellants apparently do not contend that Congress attempted to change the character of the property but only contend that Congress took away the wife's remedy. We might say further that we have been unable to find any language in the Congressional Act involved that could possibly be construed as changing the proceeds of the insurance to separate property rather than community. The only language relied on by the appellants is found in Section 454a of the World War Veterans' Relief Act, Title 38, USCA (49 Stats. 609) having to do with exemptions. Certainly this language does not in any way affect the character of the proceeds of the policy as separate or community.

(b) Wife's interest is vested.

Counsel for appellants contend "appellee's claimed rights in the case at bar are not vested". (Appellants' Brief p. 24.) Such claim is completely contrary to the law of California and the decisions interpreting it.

It is first to be noted that this Court in the case of *Lynch v. United States*, 292 U. S. 571, 78 L. Ed. 1438 (Mr. Justice Brandeis delivering the opinion), held that veterans' insurance policies (then "war risk policies") "are property and create vested rights". In the same case Justice Brandeis said

> "war risk insurance policies are contracts of the United States. As consideration for the government's obligation, the insured paid prescribed monthly premiums * * * the policies, although not entered into for gain, are legal obligations of the same dignity as other contracts of the United States and possess the same legal incidents."

It is true that prior to the amendment of the community property laws of California in 1927 Mr. Justice Holmes in *United States v. Robbins*, 269 U. S. 315, 70 L. Ed. 285, held that a wife's community interest was a mere expectancy and not a vested right and that therefore a separate tax return should not be filed by her.

In 1927, however (the Wissners were married in 1930, R. 20), Section 161A was added to the Civil Code of California providing that

> "The respective interests of the husband and wife in community property *during continuance* of the marriage relation *are present, existing, and equal interests* under the management and control of the husband as is provided in sections 172 and 172a of the Civil Code. This section shall be construed as defining the respective interests and rights of husband and wife in the community property". (Emphasis ours.)

So far as we know, since the enactment of Section 161A in 1927, no Court has ever questioned the fact that the wife's interest in community property is vested.

In *United States v. Malcolm*, 282 U. S. 792, 75 L. Ed. 714, it was determined that since the enactment of

Section 161A the wife should file a separate income tax return contrary to the determination of Mr. Justice Holmes in the *Robbins* case prior to the amendment. (See also *Commissioner of Internal Revenue v. Harmon*, 323 U. S. 44 at 48 (89 L. Ed. 60 at 63).

In *Bank of America, etc. Association v. Mantz*, 4 Cal. (2d) 319, 48 Pac. (2d) 662, the California Supreme Court said:

> "a wife, since 1927 at least, has had a present existing and equal interest in the community property although the management and control thereof is at all times in the husband. (Section 161A, Civil Code.) The only limitation upon the wife is that she must act through her husband."

Opinion of Justice Adams in this case and federal cases there cited (R. 23):

> "It cannot be denied that since the enactment of Section 161A of the California Civil Code in 1927 a wife in this state has a vested interest in one-half of the earnings of the spouses since that date. Such rights have been recognized by both federal and state courts. See Lang v. Commissioner of Internal Revenue, 304 U. S. 264 (58 S. Ct. 880, 82 L. Ed. 1331, 1336, 118 A.L.R. 319); United States v. Malcolm, 282 U. S. 792 (51 S. Ct. 184, 75 L. Ed. 714); Commissioner of Internal Revenue v. Harmon, 323 U. S. 44 (65 S. Ct. 103, 89 L. Ed. 60, 63, 67); Poe v. Seaborn, 282 U. S. 101 (51 S. Ct. 58, 75 L. Ed. 239, 243); United States v. Pettigrew, 81 F. 2nd 666."

We digress here to comment on the observations of counsel for appellants, which we quote as follows:

"His wife certainly had no present right of enjoyment of this money (the husband's earnings); if he lost it gambling or spent it sightseeing, she would have had no recourse against anyone." (Appellants' Brief p. 28.)

It is our belief that counsel's first statement is erroneous. The wife does have a present right of enjoyment of the husband's earnings. In fact, if he fails to recognize her right to enjoy a reasonable portion of that money for her support, maintenance, and pleasure, the Courts of California and probably the Courts of most states in the union, will incarcerate him in the county jail. We agree that if the husband lost the money gambling or spent it sightseeing, the wife probably would have no right of action against anyone. If we desired to be super-technical, we might observe that under certain circumstances in the State of California (where most forms of gambling are illegal) a wife might have a right of action against a gambler who took the community earnings from her husband but that is entirely beside the point. We recognize the husband's right of management of the community property. We will concede for the purpose of this argument that he has a right to gamble the money and that if he loses it the wife has no recourse. On the other hand, it is quite obvious that if the husband gambles with community funds and wins, the wife's community interest attaches to the winnings the same as it would attach to any other investment. Investing funds on a crap table is only slightly less of a gamble than investing them in a

term insurance policy. The only difference is that is one instance the investor may live to enjoy his winnings while in the other instance he must die to permit someone else to enjoy the fruits of his investment. His dying does not change the fact that the proceeds of the investment of the community funds remain community property and that the wife's interest therein is vested.

When Leonard and Margaret Wissner entered into the contract of marriage in California, under California law, and chose to make this state their residence and domicile, the wife under that contract had an immediate vested interest which became specific and certain as moneys were earned or accumulated. Likewise, the husband had an immediate vested interest in the earnings of the wife. *At the end of each month of Major Wissner's service, or, we might say, at the end of each day, as he became entitled to compensation, the wife's interest, in the amount of compensation to which his employment contract with the United States entitled him, vested and she was the owner of one-half of that compensation, subject only to the right of the husband to manage it.*

Counsel on the same page of their brief (p. 28) makes the further observation that if Major Wissner had invested his money in government bonds, naming his mother as the surviving owner, the Courts of California would have honored the contract. Counsel cited Section 704 of the Civil Code of California and two Appellate Court cases, namely, *Conrad v. Conrad*, 66 Cal. App. (2d) 280, 152 Pac. (2d) 221, and *Davies v.*

Beach, 74 Cal. App. (2d) 304, 168 Pac. (2d) 452, in support of this statement.

Neither of the cases cited are authority for counsel's statement. In both instances the funds invested were the separate property of the investor. In *Davies v. Beach*, supra, the contention was made that the funds were community property and the Court spent some time disposing of that question before deciding the case. It was only after the Court determined that the evidence showed that the funds were separate property that a decision was rendered against the wife.

The latest case on this particular subject is the case of *Katz v. Driscoll*, 86 Cal. App. (2d) 313, 194 Pac. (2d) 822. In this case one Michael Dolan, who died testate on August 2, 1946, had applied to the State Department of Social Welfare of California for old age security benefits in each of four years—1943 to 1946 inclusive. In each year Dolan asserted he was eligible for such security and did not have personal property the net value of which exceeded $600. The State Department of Social Welfare therefore granted him old age security benefits in the total sum of $3700. At the date of his death it developed that he did have property worth more than $600 in each of the 4 years and that he held government bonds in the amount of $2250, made payable to himself or, in the event of his death, to certain other persons.

The plaintiff in the case was the administrator of the estate of the deceased Dolan who brought suit for

the recovery of the bonds in order to pay claims filed by the state.

The lower Court sustained a demurrer on the basis of the provisions of Section 704 of the Civil Code of California and the regulations of the United States Treasury Department which, in substance, provide that where a surviving owner is named in a bond it shall be conclusive of his ownership and the Treasury Department will recognize no notices of other claims.

The Court considered both the cases cited by counsel for appellants, namely, *Conrad v. Conrad*, and *Davies v. Beach*, but came to the conclusion that the language of the Civil Code of California and the regulations of the Treasury Department could not protect one who was guilty of a breach of trust or fraud in purchasing the bonds in question. The Court, at page 322, said:

> "These laws and regulations are not intended to confer on the beneficiary the right to retain permanently the proceeds from the bonds irrespective of fraud *or any illegality* in the manner in which the bonds were obtained. To hold otherwise would, in effect, say that the treasury regulations not only guarantee payment to the named beneficiary, but, thereafter, when he receives the proceeds, follow him around indefinitely, and, like a protective halo, render him completely immune from any ordinarily legitimate claims thereto. *For the purpose of payment and performance of the government's contract obligation, the beneficiary is recognized as the 'sole and absolute' owner.* But *the 'rights of survivorship conferred by these (treasury) regulations upon a surviving coowner*

or beneficiary' (Paragraph 315.13 (1)) terminate there."

In this opinion the Court cited the case of *Ibey v. Ibey*, 93 N. H. 434, 43 Atl. (2d) 157, wherein the widow, after the husband's death, took the position that he had purchased bonds for the purpose of disposing of a large portion of his personal estate in fraud of her marital rights and the Court held that regardless of the treasury regulations, the bonds or their proceeds were subject to a constructive trust in favor of the widow.

We believe the latest decision of the California Appellate Court in the *Katz* case is a proper statement of the law and that where a husband endeavors to defraud the wife of her community property interests by investing community property in government savings bonds or insurance and naming another as surviving owner or beneficiary the Courts will declare a constructive trust as against the survivor who has received the bonds or their proceeds or the proceeds of the insurance policy.

VI.

SECTION 454a, OF THE WORLD WAR VETERANS' RELIEF ACT DOES NOT BY ITS WORDING DESTROY THE RIGHT OF THE WIFE TO ENFORCE HER COMMUNITY INTERESTS IN THE STATE COURTS AGAINST THE BENEFICIARY.

(a) Specifically stated exemptions limit general language.

As we pointed out in our statement opposing jurisdiction at page 5, the argument of counsel for appellants in this case depends for support wholly and solely on three lines found in the above mentioned Section 454a, namely:

> "and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever either before or after receipt by the beneficiary."

Unless these three lines destroy the right of the wife to relief in the state Courts against the beneficiary, then her rights are not destroyed by the language of the act in question.

We discussed this situation at some length in our statement opposing jurisdiction, which we assume will be used by the Court in determining this matter, but since we are not familiar with the Court's practice in the use of the various briefs filed, and for greater convenience, we will set forth our thoughts on the subject in this brief.

It would seem well to note first what the Act of Congress *did not* say. Congress said the payments in question "shall be exempt from taxation, shall be exempt from the claims of creditors, * * *" but it did not say "shall be exempt from the claims of wives

for support, alimony, or property interests recognized by the laws of any state".

A well known rule of statutory construction is that general words in a statute followed by specific words or designations are usually regarded as limited by the specific language.

50 *Am. Juris.* 244:

> ***"Similarly, in accordance with what is commonly known as the rule of ejusdem generis, where, in a statute, general words follow a designation of particular subjects or classes of persons, the meaning of the general words will ordinarily be construed as restricted by the particular designation and as including only things or persons of the same kind, class, character, or nature as those specifically enumerated. The general words are deemed to have been used, not to the wide extent which they might bear if standing alone, but as related to words of more definite and particular meaning with which they are associated."*** (Emphasis ours.)

The above statement from American Jurisprudence is supported by recent decisions of the United States Supreme Court as follows:[1] *Caminetti v. U. S.*, 242 U. S. 470, 61 L. Ed. 442; *Fitch Co. v. U. S.* 320 U. S. 582, 89 L. Ed. 472, and *Cleveland v. U. S.*, 329 U. S. 14, 91 L. Ed. 12, where Mr. Justice Douglas said at page 18:

> "Under the ejusdem generis rule of construction the general words are confined to the claims and may not be used to enlarge it."

In this instance, the general words on which appellants rely are associated with and follow two

specific exemptions, namely, "from the claims of creditors" and "from taxation". We believe that unless a plaintiff's claim falls within one of those classes, that is, either a *debt* or a *tax*, the general words employed by Congress were not intended to be and should not be construed to bring a claim such as that of plaintiff within the exemptions.

(b) This position is fully supported by many decisions subjecting the proceeds of veterans' insurance policies to legal and equitable process both before and after they reach the beneficiary.

The two cases most frequently cited upon this subject are *Schlaefer v. Schlaefer*, 112 Fed. (2d) 177, decided in 1940 by the Appellate Court of the District of *Columbia* and *U. S. v. Robinson*, 40 Fed. (2d) 14, decided in 1930 (prior to the enactment of Section 454a by Congress) by the Fifth Circuit Court of Appeals.

While these two Courts in general reached the same conclusion, namely, that the proceeds of a veteran's insurance policy were not exempt from the claims of wives or other family claims, the reasoning was slightly different in each case.

In *United States v. Robinson*, the decision was based on the conclusion that state community property laws controlled the rights of the wife to the proceeds of the policy and that Section 454, the predecessor of Section 454a, did not affect her privilege of enforcing those rights.

In *Schlaefer v. Schlaefer*, Mr. Justice Rutledge based his decision on the conclusion that exemption

statutes such as 454a were never intended to and did not destroy or affect family obligations and that, therefore, the wife's right to resort to the insurance proceeds, for the purpose of satisfying her claims, still existed.

Some subsequent decisions utilize the case of *U. S. v. Robinson* as authority. These cases, namely, *Succession of Lynch v. U. S., Succession of Jones v. U. S., U. S. v. Rose* and *U. S. v. Primilton* have been cited and commented on in a preceding section of this brief. (See pages 17 and 18.)

Other cases have followed the reasoning of Mr. Justice Rutledge in *Schlaefer v. Schlaefer* and before mentioning them we would like to discuss this case somewhat more in detail. In this matter, Justice Rutledge was construing Section 16a of the Life Insurance Act of the District of Columbia, which provided that:

> "No money or other benefit paid, provided, allowed, or agreed to be paid by any company on account of the disability from injury or sickness of any insured person shall be liable to execution, attachment, garnishment, or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law, to pay any debt or liability of such insured person * * *"

In writing the opinion Justice Rutledge said:

> "The basic issue boils down to whether Congress intended to relieve the disabled insured to the extent of his disability payments from legally enforceable obligation to support his family and

those legally dependent upon him. So far as general creditors are concerned the purpose is clear * * *

"An important, often the primary, motivation for taking out disability insurance is protection of the family, not merely of its supporter. As has been said, the funds are not earmarked for limited and particular purposes. They are derived normally from the insured's earning power * * * By law and the most sacred contract he is obligated to employ it, while it exists, for dependents' support * * * The obligation on which appellant's claim is based is not a 'debt' or a 'liability' in the ordinary usages of those terms. It is a duty of higher obligation. As has been said, it is not one within the usual purposes of exemption statutes."

It is to be noted that in our case the appellants were not dependents of the deceased while the appellee is a dependent.

Counsel for appellants, in their brief in opposition to motion of appellee for affirmation of judgment at page 24, claim that the exemptions of Section 454a are much broader than the exemptions of Section 16a of the Life Insurance Act of the District of Columbia which Justice Rutledge was considering.

This is a completely erroneous statement as is made clear by the opinion in the case of *In re Flannigan*, 31 Fed. Supp. 402, where it is pointed out that the exemption provisions under consideration in the *Schlaefer* case and those of 454a are practically identical.

Apparently appellants' counsel neglected to note the further provision of the District of Columbia Act to the effect that payments covered by it should not be liable to "execution, attachment, garnishment *or other process*". The words "other process" are certainly as broad as Section 454a and it therefore seems inescapable that Justice Rutledge took the definite position that such phraseology found in Section 454a does not defeat the rights of a widow and child.

Cases following the reasoning of Justice Rutledge are:

In re Flannigan, 31 Fed. Supp. 402. Here the divorced wife of a lunatic veteran sought the payment of alimony from funds received by him as disability compensation. The Court held that the provisions of 38 U.S.C.A. Sec. 454a did not exempt the veteran from the wife's claim and the Court said:

> "The judgment for alimony is not a debt in the ordinary sense. It is an obligation of a higher order * * * the purposes of the exemptions in this (case) were to protect not only the recipient of the benefits but to afford some degree of security to the family and dependents of such recipient. The enactment of these statutes had as their purpose, at least in part, to insure the public against the pauperism of the recipient of the benefits or that of his dependents. A divorced wife is a dependent no less in the status created by the divorce decree than in that fixed by the marriage bond. Congress did not intend to put such benefits beyond the reach of a divorced wife."

Certainly, if this be true, Congress did not intend to put the proceeds of insurance beyond the

reach of a wife's claim to vested property rights. There can be no valid distinction between a claim for alimony or support in monthly payments and a claim to the wife's interest in the property.

Hannah v. Hannah, 11 S. E. (2d) 779, 781. This case involved a claim for alimony and support by the wife against her husband, then 79 years of age, who was receiving $45 per month from the United States government as a result of the death of a son by his first wife in military service. The Court noted that these funds were protected by the provisions of 454a and called particular attention to the phrase in said section which reads "and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever". The Court then said:

> "We do not, however, view this additional language as extending the exemption beyond the claims of creditors and to thereby cover a claim of the character of alimony."

Also see

Bagnall's Guardianship, 238 Ia. 905, 29 N. W. (2d) 597.

In addition to the cases that specifically follow the reasoning of either the *Robinson* case or the *Schlaefer* case and arrive at the same result, there are numerous other cases arriving at a like result without citing either of these two leading authorities.

For example, it was held in the California case of *Gaskins v. Security Bank*, 30 C. A. (2d) 409, 85 Pac. (2d) 681, 685:

> "the beneficent purpose manifested in the act of Congress is to preserve the disabled soldier's fund against imposition on the part of designing people or depletion by the soldier's own improvidence * * *, but we cannot conceive that it was the purpose of the government to prevent the probate courts in guardianship proceedings from authorizing the application of these funds to the needs of the veteran's children * * * The obligation of a father to support his minor children is *not a debt* contemplated by this act of Congress, but is an obligation growing out of the parental status and public policy, the performance of which can ordinarily be compelled by imprisonment as well as judgment and writ of execution; and we cannot assume that the federal government ever intended to throw around these federal funds legal strictures that would permit or enable the beneficiaries thereof to refuse to discharge their duty to support their children."

This Court cited *Guardianship of Giambastiani*, 1 Cal. App. (2d) 639 (37 Pac. (2d) 142), where the claim of a guardian of a veteran for moneys advanced for him was approved and the Court said:

> "A claim of a de facto guardian for expenditures on behalf of the ward, set up in his subsequent accounting, *is not the claim of a creditor.*"

Stirgus v. Stirgus, 160 So. 285, holds that the word "creditors" in Section 454 superseded by Section 454a, contemplates an ordinary contractual obligation of statutory debt and not a claim arising by operation of law.

Other cases subjecting the proceeds of soldiers' insurance to Court process are as follows:

Arms Com. v. Arms, 260 Ky. 634, 86 S. W. (2d) 542;

Stone v. Stone, 188 Ark. 622, 67 S. W. (2d) 189;

Hollis v. Bryan, 166 Miss. 874, 143 So. 687;

In re Shinberg, 76 N.Y.S. (2d) 334;

In re Gardner, 264 N. W. 643.

Regardless of whether the above cases follow the reasoning of the *Robinson* case or the *Schlaefer* case or adopt a reasoning of their own, the decision reached by the Court in each case was the same, namely, that the proceeds of the veterans' insurance policies are not, as contended by appellants, completely exempt from Court process of all kinds and all times and under all circumstances, but rather that they are subject to Court process in many instances, under many conditions and particularly for the enforcement of the rights of the wife and the rights of the family.

It appears well established, therefore, from the decisions above cited that Section 454a does not mean what appellants contend for. It does not mean that the proceeds of veterans' insurance policies shall never be liable to Court process. The rights of wives to subject the proceeds to Court process is well established where the claim is based on family relationships. It seems quite naturally to follow that in a divorce action the proceeds of veterans' insurance in the hands of the veteran husband would be subject to the jurisdiction of the state Court not only for the

purpose of alimony but for the purpose of division where the same are community property. Division of community funds on hand by a state Court in a community property state is nothing more than a provision for the wife's support in a lump sum. If the state Court has jurisdiction to divide government insurance proceeds in the hands of the veteran between husband and wife in a divorce action, surely the same Court can protect the wife against a stranger.

VII.

THE SUPREME COURT OF THE UNITED STATES LIMITS PROVISIONS OF SECTION 454a.

In the case of the *United States Trust Company of N. Y. v. Helvering*, 307 U. S. 57, 83 L. Ed. 1104, the question presented to this Court was whether or not the proceeds of a veteran's insurance policy paid to his widow should be included in his estate for the purpose of assessing federal estate tax.

The widow contended that since the World War Veterans' Act of 1924 provided that insurance payments "shall be exempt from all taxation" and the amendment thereto in 1935 did not significantly change the situation, the proceeds of the insurance policy should not be included in the estate for federal taxation purposes. Mr. Justice Black in writing the opinion said:

> "Exemptions from taxation do not rest upon implication * * * in an analogous situation, fed-

eral bonds exempt by statute from all taxation have been held subject to a federal inheritance tax." (It seems reasonable that likewise destruction of property rights should not rest on implication.)

The opinion held that the proceeds of the insurance policy must be included in the estate of the veteran for the purpose of collecting federal taxes. It is true that Mr. Justice Black made the distinction that the tax was on the transfer rather than on the property and with this position certainly no one could quarrel.

It would seem to us that if the phraseology of the exemption clause referred to in the *United States Trust Company of N. H. v. Helvering*, namely, "shall be exempt from all taxation" was held to be not sufficiently explicit or broad to cover the case there under consideration, the language of Section 454a, which is not nearly as specific, cannot be said to cover the destruction of the wife's right to protect and enforce vested community property rights.

VIII.

CONGRESS DID NOT INTEND TO DESTROY THE RIGHT OF THE WIFE TO PROTECT AND SECURE HER VESTED COMMUNITY PROPERTY.

We have already pointed out that there is nothing in the language of the Act specifically accomplishing such a purpose. We believe there are certain circumstances and considerations that rather clearly demonstrate the fact that Congress *had no such intention*.

(a) Purpose of the Act inconsistent with destruction of women's rights.

The purpose of enacting a program of veterans' insurance must have been largely to protect the dependents of veterans and to settle, at least as far as possible, the disturbing fears of tragedy that might leave the home without the support of the husband and father. Congress knew that wives of soldiers have always played an important part in the morale of the American army. Congress knew that wives of soldiers remaining at home have always made important and, in fact, invaluable contributions to the prosecution of the wars in which their husbands fought.

Counsel have sought to bring into this case the fact that the deceased, Major Leonard O. Wissner, was seeking to get rid of his wife, Margaret. There is no evidence to show that his wife *knew* that Major Wissner was purchasing bonds for one Naomi Beiler with community funds or that he was sending similar funds to his parents for a like purpose but that situation appears in the opinion of Justice Adams at pages 19, 20, and 21 of the record. At page 21 Justice Adams states that the transfers made to the defendants, the appellants in this action, by Major Wissner "were made in order to prevent his wife from receiving them and to force her into a divorce and settlement to further plans which decedent was making for his future from which she was to be excluded". (The evidence amply supported this statement.)

It seems hardly likely that Congress, having in mind the important role played by wives of soldiers

in wartime, would have intended to provide means whereby a soldier husband could enter into a secret arrangement with his government which would result in defrauding the wife of community funds which she might use for her own support and for the support of children of the family if necessary.

In other words, it is our position that since such a provision would permit a soldier with the aid of the government to secretly defraud the wife of her property by giving it to some volunteer, it is difficult to believe that Congress intended the construction espoused by counsel for appellants.

(b) Congress had ample opportunity to add a specific provision destroying the wife's rights and did not do so.

Section 454 and Section 454a of Title 38, U.S.C.A. have been the object of constant congressional amendment, repeal and re-enactment. The most significant change came in 1935 after the Supreme Court of the United States had decided *Pagel v. Pagel*, 291 U. S. 473 (78 L. Ed. 921), holding that proceeds of a war risk life insurance policy while exempt from the claims of creditors when paid directly to the beneficiary were not so exempt when paid to a third person as administrator or executor of a deceased soldier.

From the excellent discussion found in *In re McCormick's Estate*, 8 N.Y.S. (2d) 181, it appears that Congress acted to cure the holding in the *Pagel* case.

Since 1930, after the decision of *Robinson v. U. S.*, both federal and state Courts have been consistently holding that state laws governing community prop-

erty are applicable to the proceeds of these government life insurance policies when the spouses in question resided in a community property state. Since 1935, state Courts have been holding that a wife to whom alimony was due and payable was not a creditor within the meaning of the section and that the exemptions contained in Section 454 and its successor Section 454a did not operate to bar her claim against the proceeds of war risk life insurance policies.

With these two lines of decisions on the books, it appears that in 1935 Congress repealed Section 454 and passed Section 454a to remedy one specific situation; namely, to make the proceeds exempt from the claims of creditors after they reach the veteran's estate. How can it be contended then that Congress with these decisions firmly established intended to foreclose the operation of state property law upon the proceeds of government life insurance policies sold to servicemen during World Wars I and II. The argument is even more compelling when the court considers that in 1940, when Congress set out to prepare the nation for what appeared to be an oncoming war, that a new National Service Life Insurance Act was passed, along the lines of the Life Insurance Act used in World War I but with certain significant changes. Nowhere did they attempt to broaden the exemption of the proceeds of these new life insurance policies, but they were merely content to make the National Service Life Insurance Act subject to Section 454a of Title 38.

The destruction of the right of wives to protect their vested interests is a much more serious step than the exemption against claims of creditors. The latter was accomplished by specific language. If the former had been intended, we believe specific language would have been used.

We might digress at this point to say that counsel for appellants seem to feel that the soldier suffers some loss or injury by reason of the fact he cannot give away his wife's vested interest in the proceeds of a veteran's insurance policy. It is difficult to understand this reasoning, particularly in this case, where it appears from the record (Tr. p. 20) that the appellee worked as a trained nurse long after her marriage to the deceased, Leonard O. Wissner, earning the money to permit him to complete his education. It was her efforts that made it possible for him to earn the pay of a major in the medical corps. She had not only a legal claim to one-half the insurance because it was her vested property under the laws of California, but she had the moral right to it because her efforts had contributed so largely to her husband's success.

The husband could freely give his half of the community property as an unexpected gift to his parents. Such a gift amounted to a windfall so far as they were concerned. The insurance program of the United States Government scarcely required that the husband be aided in giving away the other half of the community property which belonged to his wife.

IX.

IF SECTION 454a IS CONSTRUED TO DEFEAT A WIFE'S VESTED RIGHT IN COMMUNITY PROPERTY, IT IS IN VIOLATION OF THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

As we have already pointed out in this brief, the interest of the appellee in her husband's earnings was a vested interest arising from the contract of marriage entered into in California and the community property laws of the State of California as they affected that contract of marriage.

If Section 454a is construed in accordance with the contentions of the appellants there can be no question but that the property of the wife, Margaret V. Wissner, will be taken. *Lynch v. United States:*

> "Contracts between individuals or corporations are impaired within the meaning of the constitution whenever the right to enforce them by legal process is taken away or materially lessened". *Lynch v. United States*, supra, at page 580, head note 3rd.

This is true even though the property affected was not in possession at the time of the passage of the legislation. *Worthen Co. v. Thomas*, 292 U.S 426 at 431-432. In this case the Supreme Court of the United States, Chief Justice Hughes delivering the opinion in a creditor's suit, held that an Arkansas statute creating an exemption as to the proceeds of insurance impaired the obligation of contracts contrary to the constitutional provision.

In his opinion Chief Justice Hughes cited the case of *Sturges v. Kronenfield*, 4 Wheat. 122, 198, 4 L.Ed.

529, 549, and quoted the language of Chief Justice Marshall therein as follows:

> "It is not true that the parties have in view only the property in possession when the contract is formed or that its obligation does not extend to future acquisitions. Industry, talents, and integrity constitute a fund which is as confidently trusted as property itself. Future acquisitions are, therefore, liable for contracts; and to release them from this liability impairs their obligation."

Chief Justice Hughes then says:

> "This principle was applied to an exemption of insurance moneys in relation to antecedent debts in Bank of Minden v. Clement, 256 U. S. 126, 65 L.Ed. 857."

In other words, the opinion in the *Worthen* case says in effect that when Margaret and Leonard Wissner were married in California under the provisions of California community property law, the benefit of the industry, talents and integrity of each, looking to the future, was an important incident of that contract and any legislation that impaired the rights of either as to future acquisitions would impair the obligation of the contract.

Justice Brandeis, in *Lynch v. United States*, supra, in accordance with the quotation above cited, pointed out that whenever the right of a person to enforce a contract between individuals or corporations by legal process is taken away or materially lessened, the contract is impaired.

Likewise, in the case of *Lynch v. United States*, supra, it was held that the so-called economy act passed by the Congress of the United States detracting from the rights of a soldier under his agreement with the United States for insurance, was violative of the Fifth Amendment and therefore unconstitutional.

This holding in the *Lynch* case is a sufficient answer to the contention of counsel for appellants that the limitations of the Fifth Amendment do not apply to the statutes creating veterans' insurance and strongly supports the decision of Justice Adams when she says that if Section 454a is construed as appellants contend, it would be violative of the 5th Amendment to the constitution.

The contract between Margaret Wissner and her husband Leonard existed at the time he entered the army. She was, by that contract, entitled to a vested half of all of his earnings or the proceeds thereof. If Congress, by the words

> "benefits shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever either before or after receipt by the beneficiary"

meant to destroy the right of the appellee to enforce her property interest as against the beneficiary who admittedly is holding property belonging to her, then it becomes plain in the light of the two decisions last above referred to that Congress was depriving her of her property without due process of law.

It is true that Chief Justice Hughes, in *Worthen Co. v. Thomas*, supra, recognized the fact that in dire emergency or pressing public disaster, the state might temporarily disregard the provisions of Article II, Section 10 of the federal constitution preventing the impairment of a contract, but he was careful to point out that any action of that kind must have a reasonable relation to the legitimate end and that it must be temporary, applicable only to the period of dire emergency or pressing disaster.

We do not believe that it can be successfully or logically argued that the destruction of the wife's community rights had any reasonable relation to the prosecution of the war and certainly, if the contention of appellants is sound and Congress had any such intention, it was not limited to the period of war. This of course becomes obvious from the fact we are now long past the war and appellants still seek to take the appellee's community property.

Justice Adams, in her opinion (R. 27) cited the case of *United States v. Cohen Grocery Company*, 255 U. S. 81, 65 L. Ed. 516, in which it was pointed out that a state of war could not suspend or change the operation upon the power of Congress of the guarantees and limitations of the Fifth Amendment, which case cited others to the same effect. A recent case to the same effect is *U. S. v. John J. Fellin & Co.*, 334 U. S. 651, 92 L. Ed. 1632.

The opinion of the California Appellate Court holding that the language of 454a relied on by appellants

is violative of the Fifth Amendment if it is construed to mean that the California wife is thereby deprived of her right to utilize the courts in obtaining the community property that actually belongs to her from the beneficiary who holds it, covers this situation fully and clearly.

We would be presumptuous to assume that we can add anything to the treatment of this matter found in the Appellate Court's opinion and approved by the Supreme Court of this state. We trust, therefore, that it is unnecessary for us to set forth in our brief a repetition of the reasoning, citations, and holding in Justice Adams' opinion since the same appears on pages 24 to 28 of the transcript of record in this matter. We respectfully refer this Court to the pages of the transcript above mentioned for any additional discussion of the particular point here under consideration.

X.

SECTION 454a SHOULD, IF POSSIBLE, BE CONSTRUED SO THAT IT WILL BE CONSTITUTIONAL.

It is a well established rule of constitutional law that courts construing a legislative act will, if possible, apply the construction that will render the act constitutional rather than unconstitutional. *Blodgett v. Holden*, 275 U. S. 142, 72 L. Ed. 206 (opinion by Mr. Justice Holmes).

> "Although research has shown and practice has established the futility of the charge that it

was a usurpation when this court undertook to declare an Act of Congress unconstitutional, I suppose that we all agree that to do so is the gravest and most delicate duty that this court is called on to perform. Upon this among other considerations the rule is settled that as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the Act. Even to avoid a serious doubt the rule is the same. United States v. Delaware & Hudson Co. 213 U. S. 366, 407, 408; United States v. Standard Brewery, 251 U. S. 210, 220; Texas v. Eastern Texas R. R. Co., 258 U. S. 204, 217; Bratton v. Chandler, 260 U. S. 110, 114; Panama R. R. Co. v. Johnson, 264 U. S. 375, 390."

The same principle of statutory construction was most aptly and clearly stated by Chief Justice Hughes in the case of *Savage v. Jones*, 225 U. S. 501, 56 L. Ed. 1182 where in considering whether or not a state law was in conflict with federal powers, he said:

"*if the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power* * * *

"But the intent to supersede the exercise by the state of its police power as to matters not covered by the federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. *In other words, such intent is not to be implied unless the act of Congress, fairly*

interpreted, is in actual conflict with the law of the state." (Emphasis ours.)

It seems to us that this language of Justice Hughes is peculiarly applicable to the case before the court at the present time and that it might be paraphrased as follows:

> "If the purpose of the veterans insurance act cannot otherwise be accomplished, if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect, except by construing Section 454a to destroy the right of a California wife to the aid of the state courts in protecting and obtaining vested property rights as against a citizen of that state, then that portion of Section 454a must yield to the provisions of the Fifth Amendment of the United States Constitution."

The intent of Congress to pass an enactment in violation of the Fifth Amendment to the United States Constitution is not to be implied unless the Constitutional Act, fairly interpreted, actually deprives the California wife of her vested property.

We have said before in this brief and we say again that the purpose of constitutional acts creating veterans insurance can be wholly and completely accomplished without giving to Section 454a the drastic interpretation contended for by appellants. We sincerely assert that Section 454a is not in actual conflict with the Fifth Amendment to the Constitution of the United States or the laws of the State of California if fairly interpreted and we respectfully contend that the interpretation of said section in support

of the decision of the Appellate and Supreme Courts of California will not in any way prevent the accomplishment of the purpose of the Veterans Insurance Acts passed by the United States Congress. It will not frustrate the operation of said Acts in the field to which they apply and the provisions thereof will not be refused their natural effect.

It is hardly necessary for us to say the conclusion we arrive at is that *first*, there is nothing to indicate an intent on the part of Congress to destroy the right of wives in community property states to enforce their vested property interests against private individuals; *second*, the statute in question must, if possible, be so construed that it does not violate the Fifth Amendment to the United States Constitution by depriving persons of their property without due process of law, and *last*, that if Section 454a in the judgment of this Court cannot be construed otherwise than contended for by appellants, it is clearly violative of the Fifth Amendment and must to that extent, fall as unconstitutional.

Dated, Modesto, California,
November 21, 1949.

Respectfully submitted,
CLEARY AND ZEFF,
E. DEAN PRICE,
By LESLIE A. CLEARY,
Counsel for Appellee.

(Appendix Follows.)

Coming now to the question of the insurance policy the first question presented is: "has this Court jurisdiction to determine the property rights in this policy?" The object of the law providing that suits may be brought in the Federal Court was for the protection of the Veterans Bureau and the Government, it was to protect the United States Government from having to litigate in all the different state courts of the United States. In other words it has the application only where the United States was a party to the suit. This is demonstrated by the case of United States v. Pfitsch, 256 U.S. 547, wherein it is stated: "Furthermore it is significant that this is not the only occasion upon which Congress has provided for *suits against the United States exclusively in the District Courts, etc.*" This is not a suit against the United States. The Court therefore determines that it has jurisdiction of this suit which is between citizens of this state concerning the establishment of a trust in the proceeds of a war risk insurance policy. The United States can be forced to do only what it has agreed to do in the policy and it has agreed to pay the money to the named beneficiaries. However, regardless of the fact that the United States can stand on its rights as expressed in the policy it does not have the right to say to the wife of a deceased veteran that regardless of the fact that the premiums were paid with community property that she shall not be entitled to insist that she receive a half of the

proceeds of the policy on the death of her husband. This she does not get by reason of being designated as a beneficiary but by reason of the fact that the policy is purchased with community money. The policy is not a gratuity, Lynch v. U. S., 292 U. S. 570. Although the insurance contract was not entered into by the U. S. for gain it nevertheless charges for the same—the soldier is simply permitted to buy insurance for a rate much less than that charged by private companies. Nor does this Court consider the field in which it might be said what a soldier can buy with his money and to whom the purchased article would belong as a field which the Federal Government is entitled to occupy exclusively. The object of the insurance is primarily the protection of the soldier and his dependents and certainly the wife of the soldier falls within this classification. The earnings of a married soldier are, under the laws of the State of California, community property. If they are used to buy a war risk insurance policy for a reduced rate—the policy is community property —and to permit the soldier to give the proceeds away, in the case of his death, to the exclusion of his wife, would permit him to make a gift of the wife's half of the community property. Coming now to the question of whether or not the designation of the mother of the veteran as being entitled to one-half of the policy constituted a gift to her, we find that she testified that she did not expect to be paid for the services to her son, but that she expected something from the daughter-in-law and that she ren-

dered the services because of the love and affection she bore her son. This would not indicate that as stated in the case of Crane v. Derrick, 157 Cal. 667, the circumstances were such that it warranted the inference that it was the expectation of both parties that compensation should be made. Such a situation as results from the defendant's testimony would negative the idea that the services should be considered a valuable consideration for the making of Nettie Cannell the beneficiary of one-half of the insurance policy. On the 8th of August, 1944, when the last change of beneficiaries was made there was very little indebtedness owed by the veteran to Nettie Cannell, so this could not be held to be a valuable consideration. In this connection it may be pointed out that as a beneficiary of the insurance policy she would receive money that would not be community property of herself and husband. The veteran was entitled to give away one-half of the benefits of the policy. He attempted to give it all away—one-half to his daughter and one-half to the defendant. This he was not permitted to do. If all of the facts and parties were properly before this Court which would entitle it to make a decision on the question of the life insurance and who was entitled to it the Court would hold that the plaintiff was entitled to one-half of the policy, the defendant to one-fourth of the policy and the veteran's daughter to one-fourth of the policy. This decision would be arrived at by reasoning that when the soldier designated the daughter as entitled to one-half and the defendant as entitled to one-half he gave

away wrongfully the one-half of interest of the wife —and that since she was entitled to a one-half the interest of each of the other parties would have to be reduced to a fourth. The Court feels that when beneficiaries of a policy are changed the mere fact that one was a beneficiary before the change and was again a beneficiary after the change would not give him any more rights than if he had not been mentioned in the first place. The decision above-mentioned which the Court would make if all parties and facts were properly before it the Court would carry out by designating the recipients of the insurance money as trustees for the plaintiff to the extent that they should pay over to her of what they received that proportion which would give her a one-half of the insurance money.